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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9
10 SHARON DE EDWARDS, M.D., FACOG,
INC., a corporation, and SHARON DE
11 EDWARDS, M.D., as President and officer
of the corporation.

12 Plaintiffs,

13 v.

14 INTERNAL REVENUE SERVICE,
15 UNITED STATES GOVERNMENT
DEPARTMENT OF THE TREASURY,
16 KATHY JAKABCIN, JOSEPH SMITH,
Revenue Officers, and Does I through 50,
17 Inclusive.

18 Defendants,

Case No.: C07-3102-WHA

PLAINTIFF'S SUR REPLY
MEMORANDUM TO MOTION TO
DISMISS

Date: March 20, 2008
Time: 8:00 a.m.
Place: Courtroom 9, 19th Floor

20 **PROCEDURAL SUMMARY**

21 Defendant filed its Reply stating that Plaintiff did not follow th Court's order in serving
22 her complaint. From Plaintiff's opposition, it is obvious that her counsel was unaware of the
23 court order, which had been mis-filed. Plaintiff has already served the attorney general and the
24 individual defendants. Therefore, Plaintiff request the Court to deny defendant's motion for
25 dismissal.

26 ///

27 Sur Reply Memorandum to Motion to Dismiss
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LEGAL ARGUMENT

Plaintiff's alleged ineffective service does not warrant dismissal of her complaint

In *Hunter v. Digital Equipment Corp.* (9th Cir. 2005) 136 Fed. Appx. 28, the court stated that in dismissing for failure to prosecute, five factors must be weighed:

1. Public Interest In Expeditious resolution of Litigation;
2. Court's need to Manage its Docket;
3. Risk of Prejudice to Defendant;
4. Availability of Less Drastic Alternative;
5. Public Policy Favoring Disposition of Cases on their Merits.

See also, *Yourisk v. California Amplifier* (9th Cir. 1999) 191 F. 3d. 983, 990 .

None of the five factors supports dismissal of Plaintiff's complaint for alleged ineffective service. Rather, the factor weigh in Plaintiff's favor.

CONCLUSION

For the reasons stated herein, Plaintiff request the Court to deny defendant's motion to dismiss.

Respectfully Submitted,

Dated: February 25, 2008

/S/
F. Anthony Edwards, Esq.
Attorney for Plaintiffs